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MEMORANDUM ON THE LEGAL BASIS FOR COLD-WAR ACTIVITIES

The President, with his responsibility for the conduct of foreign relations, as Commander in Chief of the Armed Forces and with the powers inherent in the Presidency, has authority to take such executive actions as he deems appropriate to protect the national interest which are not barred by the constitution or other valid law of the land. There are no general prohibitions in law on cold-war activities of a covert nature although there are laws limiting such specific acts as mounting military expeditions in this country against a foreign sovereign. Therefore, cold-war activities not involving an act of war and not within such specific legal limitations would be within the executive prerogative.

There is no specific statutory authorization for the conduct of such activities. However, the National Security Council has directed that CIA undertake covert cold-war activities by NSC Directive 5412. For over twelve years, Congress has continued to appropriate funds for the conduct of these activities although only a small number of congressmen in our Appropriations Subcommittees know the purpose and amount of these appropriations and only another small group of congressmen of our parent Subcommittees in the Armed Services Committees and other selected congressmen know officially the nature of the activities. Congress as a whole knows that money is appropriated to CIA and knows that generally a portion of it goes for clandestine activities.

It is for the Executive Branch to determine the nature and extent of these activities and how they should be conducted. CIA has been directed by the National Security Council, of which the President is ex officio chairman, to undertake them and the Congress has provided funds to CIA for their performance. Additional statutory authority is unnecessary and in view of the clandestine nature of the activities undesirable.

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